

IMMIGRATION (AMENDMENT) ACT, 1979

No. 19



of 1979

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2 of Cap. 25:04
3. Amendment of section 3 of principal Act
4. Substitution of new section 4 of principal Act
5. Amendment of section 6 of principal Act
6. Amendment of section 10 of principal Act
7. Amendment of first section 17 of principal Act
8. Amendment of second section 17 of principal Act
9. Substitution of new section 18 of principal Act
10. Substitution of new section 19 of principal Act
11. Insertion of new section 19A in principal Act
12. Amendment of section 20 of principal Act
13. Insertion of new section 20A in principal Act
14. Amendment of section 25 of principal Act
15. Amendment of section 27 of principal Act
16. Amendment of section 28 of principal Act
17. Amendment of section 31 of principal Act
18. Amendment of first section 32 of principal Act
19. Amendment of second section 32 of principal Act
20. Amendment of section 34 of principal Act
21. Addition of new First Schedule to principal Act
22. Amendment of Schedule to principal Act

SCHEDULE

An Act to amend the Immigration Act

Date of Assent: 17.8.79.

Date of Commencement: 24.8.79.

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Immigration (Amendment) Act, 1979. Short title

2. Section 2 of the Immigration Act (hereinafter referred to as "the principal Act") is amended — Amendment of section 2 of Cap. 25:04

(a) by inserting therein, immediately after the definition of "alien", the new definition following —

““Board” means the Immigrants Selection Board established by section 18;”;

- (b) by deleting the definition of "Immigration Control Officer";
- (c) in the definition of "residence permit" by inserting therein, immediately after the words "section 19", which appear therein, the words "or 19A";
- (d) by deleting the definition of "special residence permit"; and
- (e) by deleting the definition of "visitors' work permit".

Amendment
of section 3 of
principal Act

3. Section 3 of the principal Act is amended —

- (a) in subsection (1) thereof, by deleting the words "an Immigration Control Officer", which appear therein; and
- (b) in subsection (2) thereof, by deleting the words "and the Immigration Control Officer", which appear therein.

Substitution
of new section
4 of principal
Act

4. The principal Act is amended by substituting for section 4 thereof the new section following —

"Restriction of places of entry and examination of immigrants and suspected persons

4. (1) Every person entering Botswana shall —

- (a) enter through a point of entry specified by the Minister by notice published in the Gazette; and
- (b) on arrival at the point of entry, present himself immediately to the nearest immigration officer:

Provided that this subsection shall not apply to any

person —

- (i) who is authorized in writing by the Chief Immigration Officer to enter Botswana without complying with this subsection; or
- (ii) is a member of a class of persons authorized by the Minister by notice published in the Gazette so to enter Botswana,

and who enters Botswana in accordance with the conditions, if any, subject to which that authority was so granted.

(2) It shall be no defence to a charge of contravening subsection (1) that the accused person was *bona fide* under a belief that he was not entering or had not entered Botswana.

(3) An immigration officer may require any person who has presented himself in accordance with subsection (1) (b) to submit to examination.

(4) Without prejudice to subsection (3), an immigration officer who suspects that a person is a prohibited immigrant or last entered Botswana in contravention of subsection (1) may at any time require that person immediately to submit to examination or to present himself to an immigration officer at such place and within such period as the officer making the requirement shall specify and, at that place, to submit to examination.

(5) A police officer or traditional authority who suspects that a person is a prohibited immigrant or last

entered Botswana in contravention of subsection (1) may at any time require that person forthwith to present himself to an immigration officer and submit to examination.

(6) A person who has been required under this section to submit to examination or further examination may be examined by an immigration officer (in this section and in section 6 referred to as "the examining officer") and shall answer truthfully and to the best of his knowledge every question put to him by the examining officer for the purpose of ascertaining whether he is or is not a prohibited immigrant or liable to removal from Botswana under section 6.

(7) The examining officer may require the person under examination —

- (a) to declare whether he is or is not carrying or conveying or otherwise in possession of a travel document or other document of any description specified by the examining officer, being a description appearing to the officer to be relevant to any purpose prescribed by subsection (6);
- (b) to produce to the examining officer any travel document or other document of any description prescribed by paragraph (a) which he is carrying or conveying or otherwise has in his possession;
- (c) forthwith to furnish to the examining officer such information relevant to any purpose prescribed by subsection (6) as the examining officer may specify;
- (d) to complete truthfully any prescribed form; and
- (e) to submit to examination by a medical practitioner named by the examining officer for the purpose of ascertaining whether he is or is not infected or afflicted with or suffering from any disease or physical infirmity which would render him a prohibited immigrant.

(8) The examining officer may —

- (a) take or cause to be taken the photograph, fingerprints and palmprints of the person under examination; and
- (b) search or cause to be searched the person under examination or any baggage belonging to him or under his control or, with the written sanction of the Chief Immigration Officer, any dwelling — place occupied by him for the purpose of ascertaining whether he is or is not carrying or conveying or otherwise in possession of a travel

document or other document of any description prescribed by subsection (7) (a):

Provided that no female person shall be searched under this paragraph except by a female immigration officer unless no female immigration officer is readily available in which case the search may be conducted by a female person designated for this purpose by the examining officer.

(9) At the conclusion of an examination the examining officer may, by notice in writing given to the person under examination, require that person to present himself to an immigration officer at such place and within such period as the examining officer shall specify and, at that place, to submit to further examination:

Provided that, where the person under examination is a member of a party in charge of which is a person appearing to the examining officer to be a responsible person, the notice may be given to the person in charge of the party instead of to the person under examination.

(10) Any person who contravenes this section or who fails to comply with any requirement made of him under this section or who furnishes any information in consequence of a requirement made of him under subsection (7) (c) which he knows to be false or does not believe to be true or who obstructs any examining officer in the exercise of a power conferred on him by subsection (8) shall be guilty of an offence and liable to the penalties prescribed by section 29 (2)."

Amendment
of section 6
of principal
Act

5. Section 6 (1) of the principal Act is amended by substituting for the words "any person who on examination under section 4 fails on demand by an immigration officer to produce a valid travel document", which appear therein, the words "any person being examined under section 4 who, on being required by the examining officer under section 4 (7) (b) to produce to him any travel document which he is carrying or conveying or otherwise has in his possession, fails to produce a valid travel document issued to the person under examination or produces a document which the examining officer is not satisfied is a valid travel document issued to the person under examination".

Amendment
of section 10
of principal
Act

6. Section 10 (1) (b) of the principal Act is amended by substituting for the words "section 8 (f)", which appear therein, the words "section 7 (f)".

Amendment
of first section
17 of principal
Act

7. The first section 17 of the principal Act is amended by renumbering the section as section 16 thereof.

8. The second section 17 of the principal Act is amended —
(a) by substituting for subsection (1) thereof the new subsection following —

Amendment
of second
section 17 of
principal Act

“(1) Subject to this Act, a visitor may remain in Botswana for such period not exceeding 90 days as may be specified in a visitor’s permit, in such form as may be approved by the Minister, issued to the visitor by an immigration officer and signed by that officer:

Provided that a visitor shall not remain in Botswana for more than 90 days in aggregate in any one year unless —

- (i) he is authorized by the Chief Immigration Officer in writing to do so; or
- (ii) he is entitled by virtue of subsection (2) to reside in Botswana.”;

(b) in subsection (2) thereof —

- (i) by inserting therein, immediately before the words “residence permit”, which appear in paragraph (b) thereof, the word “valid”; and
- (ii) by substituting for paragraph (c) thereof the new paragraph following —

“(c) he is a member of any class of persons exempted by the Minister under section 20A from obtaining a residence permit in order to reside in Botswana; or”;

(c) by substituting for subsection (4) thereof the new subsection following —

“(4) Where a particular visitor to whom notice in writing is to be given under subsection (3) is a member of a party in charge of which is a person appearing to an immigration officer to be a responsible person, the notice under subsection (3) may be given to the person in charge of the party instead of to the particular visitor in question.”;

(d) by inserting therein, immediately after subsection (4) thereof, the new subsection following —

“(4A) Without prejudice to subsection (3), a visitor’s permit may be issued subject to such conditions as the officer issuing it may determine, which conditions shall be specified in the permit.”; and

(e) by substituting for subsection (6) thereof the new subsection following —

“(6) A visitor who fails to comply with any visit conditions to which he is subject or with any conditions specified in his visitor’s permit in accordance with subsection (4A) shall be guilty of an offence and liable to the penalties prescribed by section 29 (2).”.

9. The principal Act is amended by substituting for section 18 thereof the new section following —

Substitution
of new section
18 of principal
Act

"Immigrants
Selection
Board

18. (1) There is hereby established a board to be known as the Immigrants Selection Board.

(2) The provisions of the First Schedule shall have effect in respect of the Board.

(3) The Minister may, by order published in the Gazette, amend the First Schedule."

Substitution
of new section
19 of principal
Act

10. The principal Act is amended by substituting for section 19 thereof the new section following —

"Residence
permits

19 (1) Any person wishing to obtain a residence permit shall lodge an application with the Board in the prescribed form and manner together with the prescribed fee which shall in no case be refundable to the applicant.

(2) The Board shall consider every application for a residence permit lodged with it in accordance with subsection (1) and shall either issue a residence permit or reject the application, in which last case the Board shall inform the applicant of its decision in writing.

(3) For the purpose of considering and determining an application for a residence permit, the Board may call for and obtain such additional information relating to the applicant, including his fingerprints and palmprints, as it may think it necessary or expedient to have.

(4) In determining an application for a residence permit, the Board shall have primary regard to the interests of Botswana and in this connexion shall take into account the character of the applicant and whether —

(a) in the case of an applicant who proposes to take up employment or engage for reward in any business, profession or other occupation in Botswana, he has or has not the qualifications, education, training and experience likely to render him efficient in that employment, business, profession or occupation and sufficient prospects of obtaining that employment or sufficient capital to engage in that business, profession or occupation, as the case may be; or

(b) in the case of any other applicant, he is or is not in a position to support himself and any dependants in Botswana otherwise than by taking up employment or engaging for reward in any business, profession or other occupation.

(5) In the case of —

(a) the wife or child under the age of 18 years of the holder of a residence permit; or

(b) the aged parent or grandparent of such a holder

who is able and has undertaken to maintain him, the Board shall not be required to take into account the matters prescribed by section (4) (a) or (b).

(6) The Minister may, either generally or with reference to a particular application for a residence permit, state in writing delivered to the Board that the interests of Botswana include such matters as the Minister shall specify and thereupon the interests of Botswana shall be deemed, for the purposes of subsection (4), to include those matters either in respect of all applications or in respect of the particular application in question, as the case may be.

(7) A residence permit shall be issued in the prescribed form for such period, not exceeding 3 years, as the Board shall determine and may be issued subject to such conditions as the Board may determine, which conditions shall be specified in the permit.

(8) The Board may, at any time, —

(a) by notice in writing given to a particular holder of a residence permit; or

(b) by notice published in the Gazette applying to all such holders of any specified class,

vary the conditions for the time being attached to a residence permit.

(9) The particular holder of a residence permit to whom notice in writing has been given under subsection (8) (a) shall forthwith transmit his permit to the Board and, subject to section 19A (4) (c), the conditions therein specified shall be varied in accordance with the notice and the permit returned to the holder.

(10) The holder of a residence permit who contravenes subsection (9) or who fails to comply with any condition for the time being attached to his permit shall be guilty of an offence and liable to the penalties prescribed by section 29 (2).

(11) A residence permit may from time to time be renewed if the holder thereof has not become a citizen of Botswana and this section shall have effect in relation to every such renewal as it has in relation to the issue of a residence permit.

(12) A person whose application for a residence permit has been rejected by the Board shall not lodge a further application with the Board before the expiry of 12 months immediately after the date of the Board's rejection, unless the Minister authorizes an earlier application."

Insertion
of new
section 19A
in principal
Act

11. The principal Act is amended by inserting therein, immediately after section 19 thereof, the new section following —

"Appeals from
Immigrants
Selection
Board

19A. (1) An applicant for a residence permit who is aggrieved by the Board's decision to reject his application or as to any condition subject to which his residence permit has been or is to be issued may appeal against that decision to the Minister.

(2) The particular holder of a residence permit who is aggrieved by the Board's decision, communicated to him by notice in writing under section 19(8)(a), to vary the conditions for the time being attached to his permit may appeal against that decision to the Minister.

(3) Every appeal under this section shall be lodged with the Minister, in such form and manner as the Minister may require together with the prescribed fee, not later than 30 days immediately after the day on which the decision complained of was communicated to the appellant.

(4) The Minister shall consider every appeal lodged with him under this section and shall —

(a) in the case of an appeal under subsection (1) against a decision of the Board to reject an application for a residence permit, either dismiss the appeal or allow it, in which last case the Board shall forthwith issue a residence permit to the appellant subject to such conditions as the Minister may determine, which conditions shall be specified in the permit;

(b) in the case of an appeal under subsection (1) against a decision of the Board as to any condition subject to which a residence permit has been or is to be issued, either dismiss the appeal, rescind the condition or alter its terms, in which last case the condition shall be specified in the permit as so altered by the Minister; or

(c) in the case of an appeal under subsection (2) against a decision of the Board to vary the conditions for the time being attached to a residence permit, either dismiss the appeal, rescind the variation or alter its terms, in which last case the conditions specified in the permit shall reflect the variation as so altered by the Minister."

Amendment
of section 20
of principal
Act

12. Section 20 (1) (f) of the principal Act is amended by substituting for the words "the President", which appear therein, the words "the Minister".

13. The principal Act is amended by inserting therein, immediately after section 20 thereof, the new section following —

“Exemption from obtaining residence permit 20A. (1) The Minister may, by notice published in the Gazette, exempt any class of persons therein specified from obtaining a residence permit in order to reside in Botswana.

Insertion of new section 20A in principal Act

(2) The Minister may make regulations providing for the issue of and other matters connected with certificates certifying that the holders thereof are members of a class of persons exempted under subsection (1) and may, for any contravention of such regulations, prescribe the penalties prescribed by section 29 (2).”

14. Section 25 of the principal Act is amended by adding thereto, immediately after subsection (1) thereof, the new subsections following —

Amendment of section 25 of principal Act

“(2) An immigration officer who suspects, on reasonable grounds, that a person has committed an offence under subsection (1) may require that person immediately to submit to examination or to present himself to an immigration officer at such place and within such period as the immigration officer making the requirement shall specify and, at that place, to submit to examination.

(3) Without prejudice to his powers to arrest without warrant, a police officer who suspects, on reasonable grounds, that a person has committed an offence under subsection (1) may require that person forthwith to present himself to an immigration officer and submit to examination.

(4) A person who has been required under this section to submit to examination may be examined by an immigration officer and shall answer truthfully and to the best of his knowledge every question put to him by that officer for the purpose of ascertaining whether he is or is not guilty of an offence under subsection (1) and for the purpose of discovering the circumstances of any offence which may have been committed under that subsection.

(5) Any person who contravenes this section or who fails to comply with any requirement made of him under this section shall be guilty of an offence and liable to the penalties prescribed by section 29 (2).”

15. Section 27 (1) of the principal Act is amended by deleting the words “or in declaration on a prescribed form”, which appear therein.

Amendment of section 27 of principal Act

16. Section 28 of the principal Act is amended by inserting therein, immediately after subsection (2) thereof, the new subsection following —

Amendment of section 28 of principal Act

“(2A) A certificate or written statement purporting to be signed by an officer of the government of any country other than Botswana shall, in any proceedings in respect of a contravention of this Act, be admissible in evidence without further proof thereof on its being placed before the court by a public prosecutor and the court shall presume that any reference therein to a person bearing the name by which an accused person is charged or any one of the names by which he is charged is a reference to that accused person, and that the facts stated therein are true, unless the contrary is proved.”.

Amendment
of section 31
of principal
Act

17. Section 31 of the principal Act is amended –
- (a) by renumbering the section as section 30 thereof;
 - (b) by deleting the words “or rail”, where they twice appear therein; and
 - (c) in the proviso thereto, by deleting the words “or any person in the course of such a rail journey”, which appear therein.

Amendment
of first section
32 of principal
Act

18. The first section 32 of the principal Act is amended –
- (a) by renumbering the section as section 31 thereof;
 - (b) in subsection (1) thereof, by substituting for the words “The President”, which appear therein, the words “The Minister”; and
 - (c) in subsection (2) thereof –
 - (i) by deleting the words “and the Immigration Control Officer”, which appear in paragraph (a) thereof; and
 - (ii) by substituting for paragraphs (b) and (c) thereof the new paragraphs following –

“(b) the steps to be taken to prevent the entrance into Botswana of prohibited immigrants or of any persons in contravention of this Act;

(c) the points of entry and the times, places and conduct of the examination, medical or otherwise, of persons entering or desiring to enter Botswana or who are suspected of being prohibited immigrants or of having last entered Botswana in contravention of section 4 (1) or of having committed an offence under section 25 (1);”.

Amendment
of second
section 32
of principal
Act

19. The second section 32 of the principal Act is amended by deleting the words “or be deemed to have acquired a domicile therein”, which appear therein.

Amendment
of section 34
of principal
Act

20. Section 34 of the principal Act is amended by substituting for the words “the Schedule”, which appear therein, the words “the Second Schedule”.

Addition of
new First
Schedule to
principal Act

21. The principal Act is amended by adding thereto, immediately after section 34 thereof, the new First Schedule set out in the Schedule.

22. The Schedule to the principal Act is amended by retitling that Schedule as the Second Schedule thereto. Amendment
of Schedule to
principal Act

SCHEDULE (s.21)
"FIRST SCHEDULE (s.18)

IMMIGRANTS SELECTION BOARD

1. The Board shall consist of the Chief Immigration Officer, who shall also be the secretary of the Board, and of not less than 4 other members appointed by the Minister.

2. Each member of the Board, other than the Chief Immigration Officer, shall hold office for such period as the Minister shall determine and shall be eligible for re-appointment.

3. (1) The Minister shall appoint a chairman and a deputy chairman of the Board from among the members thereof (other than the Chief Immigration Officer).

(2) The chairman or, in his absence, the deputy chairman shall preside at every meeting of the Board.

(3) The chairman or deputy chairman shall, when presiding at a meeting of the Board, have both an original and a casting vote.

4. The presence of —

(a) the chairman or deputy chairman; and

(b) such other members of the Board as together with the chairman or deputy chairman or both of them, as the case may be, constitute a majority of the members of the Board,

shall constitute a quorum of the Board:

Provided that no quorum shall be constituted unless one of the members present is the Chief Immigration Officer or some other immigration officer.

5. In addition to the secretary of the Board, the Minister may appoint from among public officers such officers of the Board as he may think fit.

6. Subject to this Act, the Board shall regulate its own procedure."

PASSED by the National Assembly this 6th day of August, 1979.

I.P. GONTSE,
Clerk of the National Assembly.